and accounting requirements should be specifically tailored to address these concerns. Despite this freedom to regulate, the fact remains that most non-cable communications services offered by cable companies today remain unregulated.

Therefore, in establishing the accounting and cost-of-service standards for the cable industry, the Commission should do so with an eye towards achieving competitive equity in both video programming and telephony markets so that neither industry is unjustly advantaged or disadvantaged by such regulations with respect the other. Disparate regulations which favor one competitor over the other tend to stifle investment in infrastructure and deny the full benefits of competition.

IV. WITH MINOR EXCEPTIONS, TELEPHONE COMPANIES PROVIDING VIDEO DIALTONE ARE NOT "MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTORS" UNDER THE ACT.

The Cable Act of 1992 defines a "multichannel video programming distributor," in relevant part, as:

> A person . . . who makes available for purchase, by subscribers or customers, multiple channels of video programming.[30]

In the Notice, the Commission seeks comment on whether a telephone company offering "video dialtone" service would

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[30] 47 U.S.C. Section 531(12). The Cable Act defines "video programming" as "programming provided by, or generally considered comparable to, programming provided by, a television broadcast station." 47 U.S.C. Section 422(16).

qualify as a "multichannel video programming distributor."[31]

In a typical video dialtone arrangement, it is the video programming customer, not the telephone company, who makes the programming available for purchase by end user subscribers. In fact, the current cable-telephone company cross-ownership restrictions preclude telephone companies from providing video programming directly to subscribers over video dialtone facilities in non-rural telephone service areas.[32] Thus, the definition of what constitutes a "multichannel video programming distributor" for purposes of determining effective competition in this proceeding does not encompass telephone companies providing video dialtone.[33]

BellSouth generally concurs in the comments of those who have argued that telephone companies providing video dialtone but not video programming do not qualify as multichannel video programming distributors for purposes of the "retransmission consent" provisions of the Cable Act of

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[31] Notice at para. 9.

[32] 47 U.S.C. Section 533(b).

[33] Likewise, telephone companies providing gateway services through which video programming may be accessed by subscribers are not providing video programming directly to those subscribers. At most, such telephone companies are an entity in the chain of distribution which is not "directly selling programming" to the public.

1992.[34] BellSouth sees no reason why the same arguments would not apply with equal force to determining questions involving the effective competition standard.

There are two situations in which a telephone company providing video dialtone services could qualify as a multichannel video programming distributor under the Act. One is where the telephone company is acting as a video programming distributor by providing multiple channels of video programming directly to subscribers over a video dialtone facility in its rural telephone service area.[35] The second is where the telephone company is providing video programming services over a video dialtone facility in a non-rural telephone service area pursuant to a "good cause" waiver. [36] In either case, the telephone company could meet the definition of a multichannel video programming distributor, assuming satisfaction of all other relevant definitional criteria (e.g., minimum video programming channel requirements, etc.).

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[34] See, Comments of the United States Telephone Association, GTE Service Corporation, and New England Telephone and Telegraph Company and New York Telephone Company, filed January 4, 1993.

[35] The 1984 Cable Act does not prohibit a telephone company from providing video programming directly to subscribers in a rural area (as defined by the Commission). See, 47 U.S.C. Section 533(c).

[36] See, 47 U.S.C. Section 533 (b)(4).

V. THE COMMISSION SHOULD DISTINGUISH BETWEEN INDEPENDENTLY OWNED STAND-ALONE SYSTEMS UNDER 1,000 SUBSCRIBERS AND THOSE AFFILIATED WITH EITHER A LARGE CABLE OPERATOR OR AN MSO.

For purposes of developing less burdensome regulations for small cable systems having 1,000 or fewer subscribers, the Commission asks whether it should distinguish between independently owned stand-alone systems and those which are owned by a large MSO.[37]

The Commission should not allow a small system which is affiliated with a large cable system or MSO to be exempted from the regulations applicable to its larger affiliates. Presumably, such affiliation will allow it to draw upon the resources, financial strength and access to programming of its larger affiliate. Consequently, there should be no presumption that such system operates in such a manner that it needs the additional relief intended by the Act.

[37] Notice at para. 133.

VI. CONCLUSION

For the above reasons, BellSouth urges the Commission to adopt rules governing rate regulation of the cable industry in accordance with these comments.

Respectfully submitted,

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